

In the Matter of Merchant Mariner's Document No. Z-514236 and
all other Seaman Documents
Issued to: CHESTER LARRY HAYES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

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CHESTER LARRY HAYES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 11 January 1957, an Examiner of the United States Coast Guard at Galveston, Texas, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as an oiler on board the American SS BULKLUKE under authority of the document above described, on or about 19 September 1956, Appellant assaulted another member of the crew, Walter A. Leycock, with intent to do bodily harm by striking at Leycock with an oil burner.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings and the rights to which he was entitled including his right to be represented by counsel of his own choice. Appellant elected to waive that right and act as his own counsel at the commencement of the hearing on 2 November 1956. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer made his opening statement and introduced in evidence the testimony of Walter A. Leycock, the seaman allegedly assaulted. Appellant testified under oath in his behalf. Appellant stated that he was attacked by Leycock at the entrance to the engine room without warning or provocation. The hearing was then continued awaiting the availability of a witness for the Investigating Officer.

When the hearing was reconvened on 13 December 1956, Appellant was represented by attorney. Leo H. Adams, the relief engineer on the BULKLUKE at the time of this incident, testified as a witness for the Investigating Officer. Appellant took the witness stand again to be examined by his counsel after the Examiner denied counsel's motion to dismiss. The balance of the evidence consisted of a copy of the Coast Guard record of investigation and a letter by one of the physicians who treated Appellant's injuries. Both of

these documents were stipulated in evidence by the parties.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served and Appellant surrendered his document on 11 January 1957. Appeal was timely filed on 10 February 1957. Delay of the review of the case until November 1957 was requested by counsel.

FINDINGS OF FACT

On 18 and 19 September 1956, Appellant was serving as an oiler on board the American SS BULKLUKE and acting under authority of his Merchant Mariner's Document No. Z-514236 while the ship was at a dock in the port of Texas City, Texas.

Shortly before midnight on 18 September, fireman-watertender Walter A. Leycock returned to the ship from shore leave and was changing his clothes before going on watch in the fireroom when Appellant entered the room which was share by the two seamen. Appellant was also scheduled to stand the 0000 to 0400 watch on 19 September. An argument developed between the two men. Appellant pulled out a knife and threatened to kill Leycock. Appellant then left the room after Leycock agreed to meet Appellant on the fantail. Leycock went below and relived the fireman-watertender on watch in the fireroom instead of going to meet Appellant.

Between 10 and 15 minutes later, relief engineer Adams was standing on the operating platform in front of the boilers in the fireroom when he heard a wrench falling through the grating toward Leycock who was standing on the floor plates by the boilers. The relief engineer looked up and saw Appellant coming down the port ladder. Appellant threw a socket wrench which struck Leycock on the chest. The relief engineer ordered Appellant to leave but he continued down the ladder, picked up a piece of iron pipe about 2 feet long and advanced toward Leycock. As Appellant drew near, Leycock took a knife out of his pocket and held it in his right hand. When Appellant swung the pipe at Leycock, the latter ducked and then slashed Appellant from his left ear to the right side of his chest inflicting a severe laceration which cut through the jugular vein. Appellant was also cut on his left arm. Relief engineer Adams rushed out to the dock and called the police. Appellant dropped the pipe and managed to get to the main deck under his own power although he was bleeding profusely. A few minutes later, Leycock was disarmed by the police. Appellant was

taken to a hospital and given emergency treatment. He was in critical condition before recovering from wounds which required about 200 stitches.

Leycock was arrested and indicted for assault with intent to commit murder. Insofar as the present record discloses, this action is still pending before a Texas State court, the 56th District Court of Galveston County.

Appellant's prior disciplinary record consists of an admonition in 1953.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. In essence, the consolidated appeals of counsel state that:

POINT 1. Appellant was not represented by counsel on the first day of the hearing due to Appellant's hospitalization and the short notice of two days before the hearing. Consequently, Leycock was not cross-examined by counsel.

POINT 2. Relief engineer Adams was not a disinterested witness, as stated by the Examiner, because he was a supervisory employee of the company owning the ship.

POINT 3. The Examiner's decision is contrary to the weight of the evidence which shows that

- a. Leycock would have required medical treatment if he had been hit with a wrench.
- b. There is a material discrepancy as to whether Appellant allegedly used an oil burner, a piece of solid iron or a piece of iron pipe to attack Leycock.
- c. Leycock could not have cut Appellant, as described, from a crouched position after he ducked the intended blow with the weapon.
- d. Appellant could not have climbed the 60-foot ladder to the main deck with a cut jugular vein; Appellant threw tools at Leycock after he attacked Appellant at the entrance to the engine room.
- e. The Examiner ignored the testimony of Police Sergeant Lawrence that Leycock resisted arrest.

f. Leycock was drinking heavily but Appellant was sober. An affidavit by messman Holt states that Leycock consistently carried a long knife and drank intoxicants on board ship.

g. Leycock was indicted whereas Appellant was seriously injured while acting only in self-defense.

For these reasons, it is requested that the decision be reversed or a new hearing granted in order to permit Appellant to produce additional evidence.

APPEARANCES: Ambrose A. Lukovich, Esquire, of Galveston, Texas,
of Counsel at the hearing and on appeal.
Peter J. La Valle, Esquire, of Texas City, Texas, of
Counsel on appeal.

OPINION

The Examiner questioned Appellant thoroughly as to whether he desired counsel to represent him at the hearing but Appellant indicated that he wanted to represent himself. It was only then that the Examiner went ahead with the proceedings and took the testimony of Leycock on the first day of the hearing. In addition, there was no request made for the return of Leycock to the witness stand when appellant was later represented by a lawyer. Hence, Appellant was not denied any of his rights with respect to representation by counsel and cross-examination of Leycock.

The Examiner specifically stated that he accepted the version of the incident given by Leycock and substantially corroborated by the testimony of relief engineer Adams who was a disinterested witness. My above findings are based on such testimony which is opposed by that of Appellant. Exception is taken to the Examiner's statement that the relief engineer was a disinterested witness. The ground stated for the exception is that the relief engineer's testimony might have been biased because he has been a supervisory employee of the shipowner for a long period of time. This statement is not supported by the hearing record. On the contrary, the relief engineer testified that he was not a regular employee of the shipowner but obtained this particular job through the union on a rotational basis. Also, the relief engineer testified that he had not known either Appellant or Leycock prior to this time. Consequently, the Examiner's statement that the relief engineer was a disinterested witness is strongly supported and there is nothing in the record to refute it except counsel's bare contention. It follows that the Examiner's reliance upon the testimony of the relief engineer in accepting Leycock's version affords no basis for rejecting this choice by the Examiner.

It is also my opinion that the additional points raised on appeal concerning the weight of the evidence do not constitute adequate bases for refusing to accept the Examiner's rejection of Appellant's testimony that he was the victim of an unprovoked attack by Leycock at the entrance to the engine room on the main deck. The Examiner's determinations on questions of credibility will be accepted unless the resulting findings are rendered improbable or unreasonable due to other circumstances or facts presented in the case. For the following reasons, I do not think that the issues raised in Point 3 on appeal require reversal of the Examiner's findings.

The weight of the wrench which struck Leycock is not mentioned. It might have been thrown with little force and struck Leycock a glancing blow on the chest. If so, it is not unreasonable that Leycock did not require medical treatment due to this blow.

The discrepancy in the testimony as to the type of weapon used by Appellant is not material. A round rod of solid iron would look like a piece of iron pipe and an oil burner is simply a piece of iron pipe with a fitting on the end. In the excitement, one such type of weapon could easily be mistaken for one of the other two. The weight of the evidence indicates that it was a piece of iron pipe although the relief engineer said it was an oil burner. Leycock stated that he picked up the piece of metal dropped by Appellant after he had been cut; both Appellant and the officer who arrested Leycock indicated that he had a piece of pipe in his hand when he went on the dock. As to the allegation in the specification that the weapon was an oil burner, the proof need not adhere strictly to the wording of the specification in these administrative proceedings so long as there has been actual notice of the issues and there is no element of surprise. There was notice and no surprise as to this factor in the case under consideration.

Concerning the location of the injuries, it is perfectly plausible that Leycock first ducked into a crouched position to avoid the intended blow with the piece of pipe and then lunged forward far enough to cut Appellant on the throat and left arm before Appellant could check the forward motion of his body induced by swinging the weapon to Leycock.

There is no expert testimony to support the proposition that Appellant would not have been able to get to the main deck if the injuries had been received in the fireroom rather than at the engine room entrance. Appellant testified that he sat down on deck for 30 to 35 seconds before he became unconscious. There is nothing in the record to indicate that this length of time could

not have been utilized by appellant to climb the ladder from the fireroom to the main deck.

The fact that Leycock temporarily refused to surrender the iron pipe to the arresting officer is brought out in a written report by Sergeant Lawrence. This officer did not testify at the hearing since he had no direct knowledge of the events referred to in the specification. Leycock's conduct afterward has no conclusive bearing on the incident covered by the allegations.

By their own admission, both men had been drinking acholic beverages while ashore earlier in the day. But, apparently, the relief engineer thought that both of them were capable of standing their watches properly. The affidavit concerning the carrying of knives by Leycock and his drinking does not constitute grounds for setting aside the judgment of the Examiner that Leycock was the person attacked in this particular instance. Assuming the truth of the affidavit, it is not inconsistent with the facts found in this case.

The fact that Appellant was seriously injured does not exonerate him because the testimony accepted by the Examiner shows that Appellant was the aggressor and his injuries were received when Leycock acted in self-defense against the wielder of an iron pipe. In view of the evidence presented in this case, I do not feel bound to dismiss the charge of misconduct against Appellant because of the fact that Leycock was indicted in Texas and might be convicted for assault with intent to commit murder. Any such conviction would obviously be based on evidence which is considerably different than the evidence considered by the Examiner as the most creditable submitted before him at the hearing against Appellant's document.

The serious nature of this offense has been commented on by the Examiner. However, in consideration of all the circumstances, the order of revocation will be reduced to an outright suspension for a period of one year. Fortunately, Leycock was not injured; Appellant's prior record consists only of an admonition; and it is presumed that his injury will act as a greater deterrent against such conduct in the future than would more severe action with respect to his seaman's document.

ORDER

The order of the Examiner dated at Galveston, Texas, on 11 January 1957, is modified to provide for an outright suspension of twelve (12) months from 11 January 1957.

As so modified, said order is

AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 31st day of December, 1957.